

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

CITY OF GREENE
Butler County, Iowa

ADMINISTRATIVE ORDER
NO. 2008-AQ- 54

TO: William Christensen, Mayor
City of Greene
P.O. Box 471
Greene, IA 50636

I. SUMMARY

This order requires you to remove and properly dispose of all solid waste located at the site described below in this order, and to pay a penalty of \$6,000.00 subject to your appeal rights stated in this order.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Eric Wiklund, Field Office 2
Iowa Department of Natural Resources
2300 15th Street
Mason City, Iowa 50401
Phone: 515/281-4899

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: CITY OF GREENE

Director to assess administrative penalties, the DNR has jurisdiction to issue this order.

III. STATEMENT OF FACTS

PAST ENFORCEMENT HISTORY

1. The City of Greene (City) owns approximately 300 feet of unpaved road located at South Second Street in Greene, Iowa 50636.
2. Croell Redi-Mix, Inc. manufactures concrete and has a facility that is located at 510 South Second Street in the City.
3. On October 14, 1998, the City was notified of fugitive dust violations via certified letter.
4. On April 27, 1999, DNR Field Office 2 received a complaint that the dust along South Second Street was causing a nuisance situation.
5. On June 17, 1999, DNR Field Office 2 received a complaint that the dust on South Second Street was causing a nuisance situation.
6. On July 6, 1999, the City was notified of its fugitive dust violation via certified letter.
7. On July 9, 1999, DNR Field Office 2 contacted the mayor of the City via phone. During the conversation, the mayor confirmed his intent to control the fugitive dust.
8. On July 13, 1999, DNR Field Office 2 received a letter from the City stating that dust control will be applied.
9. On November 9, 1999, DNR Field Office 2 contacted the City's mayor to discuss dust control on the Croell Redi-Mix, Inc. driveway located on South Second Street.
10. On May 16, 2000, the mayor called DNR Field Office 2 to confirm the application of dust control.
11. On August 25, 2000, DNR Field Office 2 received a complaint stating that dust along South Second Street was once again causing a nuisance.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: CITY OF GREENE

CURRENT ENFORCEMENT HISTORY

12. On May 30, 2001, Eric Wiklund, environmental specialist for DNR Field Office 2, responded to a complaint that dust from the City road near the Croell Redi-Mix, Inc. plant was causing a nuisance situation for two residences near the facility. Mr. Wiklund determined that fugitive dust from the Croell Redi-Mix, Inc. lot was consistently crossing the property line of one of the houses and creating a nuisance situation. The dust was being generated primarily by heavy truck traffic originating at the Croell Redi-Mix, Inc. plant.

13. On May 31, 2001, Mr. Wiklund contacted Harlan Taylor, a representative of Croell Redi-Mix, Inc., in order to discuss observations made at the May 30, 2001 investigation. Mr. Wiklund informed Mr. Taylor that Croell Redi-Mix, Inc. would be referred for further legal enforcement and penalties. Mr. Taylor agreed to pave the Croell Redi-Mix, Inc. driveway if the referral was dropped.

14. On June 1, 2001, DNR Field Office 2 received a phone call from Ray DeVries, Mayor of the City, regarding the violations. Mr. Wiklund informed Mayor DeVries that the matter would be referred for legal enforcement action and possible penalties. Mayor DeVries indicated that he wished to avoid legal action and agreed to take immediate action to stop the generation of fugitive dust from the road.

15. On June 6, 2001, DNR Field Office 2 issued a Notice of Violation letter to the City for fugitive dust. A Notice of Violation letter was also issued to Croell Redi-Mix, Inc. for fugitive dust. Mr. Wiklund received a phone call from the Mayor stating his intention to apply dust control.

16. On June 11, 2001, DNR Field Office 2 received a letter from Croell Redi-Mix, Inc. stating its intention to pave the parking lot.

17. On January 12, 2002, Mr. Wiklund discussed dust control with City employee, Jim O'Brien.

18. On September 12, 2007, Mr. Wiklund responded to a complaint that dust from the City road near the Croell Redi-Mix, Inc. plant was causing a nuisance for a residence near the facility. Mr. Wiklund determined that fugitive dust from the Croell Redi-Mix, Inc. lot was consistently crossing the property line of the house and creating a nuisance situation. Mr. Wiklund recorded video of the violation. The dust was being generated primarily by heavy truck traffic originating at the Croell Redi-Mix, Inc. plant.

19. On September 25, 2007, DNR issued the City a Notice of Violation letter in regards to the September 12, 2007, investigation. The letter cited the City for fugitive dust. The letter informed Mayor William Christensen that the matter was being referred for review and enforcement action.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: CITY OF GREENE

20. On October 3, 2008, Mr. Wiklund visited the site in response to a complaint and observed and documented fugitive dust emissions. Mr. Wiklund recorded video of the violation.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

2. 567 IAC 23.3(2)(c)(1) requires that reasonable precautions be taken to prevent nuisance amounts of particulate matter from becoming airborne. Reasonable precautions must be taken to prevent visible amounts of fugitive dust from crossing the lot line of the property on which the emissions originate. DNR determined that fugitive dust from the Croell Redi-Mix, Inc. lot was consistently crossing the road onto residential property thereby causing a nuisance situation. By not consistently applying dust control, the City did not take reasonable precautions to prevent the dust from becoming a nuisance. The above-facts indicate a violation of this provision.

V. ORDER :

THEREFORE, the DNR orders that the City do the following:

1. Immediately control fugitive dust from South Second Street in the City;
2. Submit a plan of action that details the City's plans to permanently control fugitive dusts within 60 days of the date from which the Director signs this order; and
3. Pay a penalty of \$6,000.00 within 60 days of the date from which the Director signs this order.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: CITY OF GREENE

criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$6,000.00. The administrative penalty is determined as follows:

Economic Benefit – It could be expected that the City would need to apply dust control at least 4 times a year at a cost of \$250.00 per application. This would cost the city approximately \$1,000.00 per year. DNR has been working with the City since October 14, 1998. Based on the above considerations, \$2,000.00 is assessed for this factor.

Gravity of the Violation – The allowance of fugitive dust escaping across the property line is a nuisance to neighbors who live along the road in that it has prevented the comfortable enjoyment of their property. The amount of dust coming from the road was significant. On days when the cement plant is busy, the dust would significantly impact outdoor activities. Furthermore, fugitive dust can settle on vehicles and property resulting in the need to clean the vehicles and property. Fugitive dust can also cause adverse health effects to people with respiratory problems. Based on the above considerations, \$1,000.00 is assessed for this factor.

Culpability – The City has occasionally applied dust control, but never aggressively or consistently. Moreover, the City has ignored repeated requests to adequately maintain dust control. DNR has worked with the City for nine years regarding complaints over fugitive dust and DNR has had numerous contacts with the City regarding its obligation to control the fugitive dust from the road. Based on the above considerations, \$2,500.00 is assessed for this factor.

Aggravating Factor – DNR first notified the City of fugitive dust issues in 1998, and DNR has notified the City of the need to resolve these issues on numerous occasions since that time. However, DNR continues to receive complaints regarding fugitive and to observe and document fugitive dust issues. An additional \$500.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.138 and 567 IAC 7.5(1), a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the director of DNR and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: CITY OF GREENE

VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 15 day of
Dec., 2008.

Butler County Air Quality File; Anne Preziosi; DNR Field Office 2; Eric Wiklund;
VII.C.2